

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an
individual and enrolled member of the
Confederated Tribes of the Colville
Reservation; and DONALD L.
MICHEL, an individual and enrolled
member of the Confederated Tribes of
the Colville Reservation; and the
CONFEDERATED TRIBES OF THE
COLVILLE RESERVATION,

Plaintiffs,

And

STATE OF WASHINGTON,

Plaintiff-Intervenor,

v.

TECK COMINCO METALS, LTD.,
a Canadian corporation,

Defendant.

No. CV-04-256-LRS

**ORDER GRANTING
PLAINTIFFS PAKOOTAS,
MICHEL, AND THE STATE
OF WASHINGTON'S JOINT
MOTION FOR FED. R. CIV. P.
54(b) CERTIFICATION**

This Matter having come before the Court on Plaintiffs' Joint Motion for Fed. R. Civ. P. 54(b) Certification, counsel for the Defendant having indicated that it does not oppose Plaintiff's Motion (Ct. Rec. 185), and the Court having reviewed the file and pleadings therein and being otherwise fully advised in the

**ORDER GRANTING PLAINTIFFS PAKOOTAS,
MICHEL, AND THE STATE OF WASHINGTON . . . - 1**

1 matter, hereby finds, determines, and concludes that:

2 1. This action involves multiple parties and multiple claims.

3 2. Plaintiffs Pakootas and Michel have no other claims in this action except
4 their claim for civil penalties brought under CERCLA's citizens suit provision, 42
5 U.S.C. § 9659. Plaintiff the State of Washington joined in this civil penalties
6 claim. The Court's September 19, 2008 dismissal of the civil penalties claims
7 pursuant to Fed. R. Civ. P. 12(b)(1) is a final disposition of those claims.

8 3. Plaintiffs' Unilateral Order (UAO) based penalties claim is distinct from
9 the remaining CERCLA claims in this case. Litigation of the remaining claims
10 will not raise issues related to the penalties claim, nor will they provide
11 independent ground to resolve the penalties claim. Thus, nothing in the
12 subsequent litigation gives reason to delay appeal of the UAO based penalty
13 claim.

14 4. The parties have stipulated that the claims in this action should be
15 litigated in at least two phases. The parties have also stipulated that the last phase
16 should not be litigated until substantial completion of an ongoing Remedial
17 Investigation and Feasibility Study (RI/FS). Substantial completion of the RI/FS
18 may be several years away. The status of the RI/FS does not affect appellate
19 review of the dismissal of the civil penalties claim on grounds of lack of subject
20 matter jurisdiction.

21 5. If the dismissal of the civil penalties claim is not certified as a final
22 judgment, appeal by Plaintiffs Pakootas and Michel of their only claim and appeal
23 of the dismissal on subject matter jurisdiction grounds of the only citizens suit
24 claims in this action will be delayed for possibly several years.

25 6. There is no just reason for delay.

26 Based on these findings, the Court hereby orders that:

27 1. Plaintiffs' Joint Motion for Fed. R. Civ. P. 54(b) Certification is
28

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1 GRANTED.

2 2. The Court directs that its September 19, 2008 Order Granting
3 Defendant's 12(b)(1) Motion, *Inter Alia*, reconsidered and modified following
4 Plaintiffs' Motion for Partial Reconsideration, be entered as a final judgment.

5 **DATED** this 17th day of October, 2008.

6 *s/Lonny R. Suko*

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8 LONNY R. SUKO
United States District Judge

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**ORDER GRANTING PLAINTIFFS PAKOOTAS,
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